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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,103	09/10/2004	Yoel Sasson	SASSON3	2096

1444 7590 11/18/2008

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EXAMINER	
PURDY, KYLE A	

ART UNIT	PAPER NUMBER
1611	

MAIL DATE	DELIVERY MODE
11/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/507,103	SASSON ET AL.	
	Examiner	Art Unit	
	Kyle Purdy	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 August 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17,19-25 and 28* is/are pending in the application.

4a) Of the above claim(s) *1-14* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-17,19-25 and 28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Application

1. The Examiner acknowledges receipt of the amendments filed on 08/28/2008 wherein claims 15, 17 and 21 have been amended and claim 28 newly added. Claim 19 has been cancelled.

2. Claims 15-17, 19-25 and 28 are presented for examination on the merits. The following rejections are made.

Response to Applicants' Arguments

3. Applicants arguments filed 08/28/2008 regarding the rejection of claims 17, 21, 23 and 24 made by the Examiner under 35 USC 112, second paragraph have been fully considered and they are found persuasive. This rejection has been overcome by amendment.

4. Applicants arguments filed 08/28-2008 regarding the rejection of claims 15, 16, 20 and 22 made by the Examiner under 35 USC 102(b) over Aven (WO 00/18227) have been fully considered and they are found persuasive. This rejection has been overcome by amendment.

5. Applicants arguments filed 08/28-2008 regarding the rejection of claims 15, 16, 19, 20 and 22 made by the Examiner under 35 USC 103(a) over Aven have been fully considered and they are found persuasive. This rejection has been overcome by amendment.

6. Applicants arguments filed 08/28-2008 regarding the rejection of claims 15-25 made by the Examiner under 35 USC 103(a) over Aven in view of Lichti et al. (US 5403813) have been fully considered and they are found persuasive. This rejection has been overcome by amendment.

New Rejections, Necessitated by Amendment
Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. **Claims 15, 16, 20, 22 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taranta et al. (US 2002/0098221).**

9. Taranta is directed to oil-in-water (EW) formulations of insecticides for agricultural purposes. The composition is taught to also comprise one or more solvents including carboxylic acids with functional groups such as lactic acid (see [0032]; see instant claim 15). Exemplified compounds are ethylhexyl lactate, butyl lactate, ethyl lactate and so on (see [0032]; see instant claim 16). The formulation is to comprise from between 1 to 25% by weight of a cosolvent such that crystallization of the product is inhibited (see [0045]; see instant claim 20). Taranta teaches also teaches that the pesticide is to be included in the composition from 0.05 g/L to 200 g/L (0.005% to 20% by weight).

10. Taranta fails to specifically teach a composition that comprises a lactate ester. Taranta also fails to teach the composition as having a weight ratio between the pesticide and the lactate ester as being from 1:1 to 1:4.

11. Regardless, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Taranta with a reasonable expectation for success in arriving at a pesticidal composition comprising a lactate ester. As taught by Taranta, lactate

esters are useful because they prevent premature crystallization of the pesticidal EW. With respect to the requirement that the weight ratio of the pesticide to lactate ester this limitation is obvious. One ordinarily skilled in the art would be motivated to adjust the ratio of the compounds knowing that one is needed to kill the desired pest and that the other is needed to prevent premature crystallization of the composition. If by standard optimization of the composition one found that a ratio of 1:1 to 1:4 was useful and significant, then this result would be one of ordinary skill and common sense, and not one of innovation. Therefore, a pesticidal EW comprising a lactate ester wherein the pesticide and the lactate ester have a weight ratio of 1:1 to 1:4 to is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

12. **Claims 17, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taranta et al. (US 2002/0098221) in view of Lubetzky et al. (EP 0670113).**

13. Taranta is relied upon for disclosure described in the rejection of claims 15 and 20 under 35 U.S.C. 103(a).

14. Taranta fails to teach the EW compositions as comprising a rosin component.

15. Lubetzky cures this deficiency. Lubetzky is directed to agrochemical EWs. The EW comprises a pesticide and a rosin/rosin derivative (see abstract). Exemplified rosin derivatives include rosin esters (see page 4; see instant claim 17). It is taught that inclusion of rosin and rosin derivatives are beneficial because they impart stability to the composition as well as reduce phytotoxicity (see page 4). The plasticizer is to be included into the composition at a weight

percent of from about 0.5% to about 50% (see page 2; see instant claims 21 and 24). Pesticides are to be included into the composition from about 4.5% to about 67% by weight (see page 2).

16. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Taranta with Lubetzky with a reasonable expectation for success in arriving at an EW comprising a rosin derivative from 1 to 15% by weight of the composition. One would have been motivated to include rosin derivatives into the EW of Taranta because in doing so would result in a product with enhanced stability and reduced phytotoxicity. With respect to the requirement that the weight ratio between the pesticide and the rosin be from 1:0.05 to 1:1, this requirement is obvious. As the compositions are directed to pesticidal EWs, and rosin derivatives are being included to impart stability and reduce phytotoxicity, one ordinarily skilled in the art would endeavor to optimize a composition such that the effects of both were strongly utilized. If such a result were that the weight ratio between the pesticide and the rosin was 1:.05 to 1:1, then this result would be one of ordinary skill and common sense. Therefore, a pesticidal EW comprising a rosin derivative wherein the pesticide and the rosin have a weight ratio of 1:.05 to 1:1 to is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

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Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taranta et al. (US 2002/0098221) in view of Aven (US 6165940).

17. Taranta is relied upon for disclosure described in the rejection of claims 15 under 35 U.S.C. 103(a).

18. Taranta fails to teach the EW as comprising any of the instantly claimed pesticides (see instant claim 19).

19. Aven is directed to non-aqueous suspension concentrates for agricultural purposes. It is taught that the concentrate can be formulated into aqueous dispersions and emulsions (column 8, lines 21-25). Exemplified pesticides for crop protection include flusilazole, prochloraz and penconazole (see column 3, lines 5-25).

20. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Taranta with Aven with a reasonable expectation for success in arriving at an EW comprising a pesticide such as perchloraz, flusilazole and penconazole. One would have been motivated to include such pesticides because they are known to be useful for protecting agricultural crops from insect damage. Therefore, a pesticidal EW comprising a a pesticide such as perchloraz, penconazole and flusilazole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle A. Purdy whose telephone number is 571-270-3504. The examiner can normally be reached from 9AM to 5PM.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau, can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kyle Purdy/
Examiner, Art Unit 1611
November 3, 2008

/Sharmila Gollamudi Landau/
Supervisory Patent Examiner, Art Unit 1611